

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

In the Matter of the Petition of)	
)	Docket 04-0653
USCOC of Illinois #1, LLC)	
USCOC of Illinois RSA #4, LLC)	
USCOC of Rockford, LLC)	
USCOC of Central Illinois, LLC)	
)	
For Designation as an Eligible)	
Telecommunications Carrier)	
Under 47 U.S.C. § 214(e)(2))	

RESPONSE TO MOTION FOR CHANGE OF LOCATION OF HEARINGS

USCOC of Illinois RSA #1, LLC; USCOC of Illinois RSA #4, LLC; USCOC of Rockford, LLC; and USCOC of Central Illinois, LLC (collectively “U.S. Cellular”), by its attorneys, hereby responds to the Motion for Change of Location of Hearings (“Motion”) filed by Bergen Telephone Company, Glasford Telephone Company, Leaf River Telephone Company, Montrose Mutual Telephone Company, New Windsor Telephone Company, Oneida Telephone Exchange, Sharon Telephone Company, Viola Home Telephone Company and Woodhull Community Telephone Company (collectively “Movants”) in accordance with the procedural schedule established by the Administrative Law Judge in this proceeding as follows:

I. EXECUTIVE SUMMARY

1. Movants seek an order setting all proceedings in Springfield, Illinois on the following bases: (a) the Intervenorors are, on the whole, located much closer to Springfield than to Chicago; (b) the rural service areas at issue in the proceeding are located closer to Springfield than Chicago; and (c) the location of Intervenorors’ witnesses, and the staff assigned to this case are located closer to Springfield than Chicago. See, Motion at ¶¶ 2, 3, and 5, respectively. The

Movants Motion proffers arguments that are misleading, misguided and based on a faulty reading of the Public Utilities Act (the “Act”) and Illinois Commerce Commission’s (“Commission”) Rules of Practice. Accordingly, the Movants’ Motion should be denied *in toto*.

II. ARGUMENTS

A. The Choice of a Hearing Location is Discretionary

2. Section 10-104 of the Act (220 ILCS 5/10-104) sets forth the criteria the Commission should consider in determining the location of Commission proceedings and reads as follows:

All hearings before the Commission or any commissioner or hearing examiner shall be held within the county in which the subject matter of the hearing is situated, or if the subject matter of the hearing is situated in more than one county, then at a place or places designated by the Commission, or agreed upon by the parties in interest, within one or more such counties, or at the place which **in the judgment of the Commission** shall be most convenient to the parties to be heard. (emphasis added)

3. Similarly, 200.530 of the Commission’s Rules of Practice (83 Ill. Admin. Code Sec. 200.530), which codifies Section 101-04, states in relevant part as follows:

Hearings **may** be held at such reasonable place in the State ... as **may** be consistent with the nature of the proceedings, the convenience of the parties and the public interest. (emphasis added)

4. In applying Section 10-104 of the Act and Section 200.530 of the Commission Rules of Practice, the Commission presumably chose Chicago as the reasonable place in the State for holding hearings in this proceeding.

5. The use of the phrase “in the judgment of the Commission” in Section 10-104 as well as the use of the term “may” in Section 200.530 establishes that the determination of a hearing location is discretionary and the Commission is not required to hold hearings with regard to any particular matter in either Chicago or Springfield. Instead, the Commission may set the location for hearings in any particular matter as such location may be determined based on the clear and unambiguous language in Section 10-104 as well as the factors enunciated in Section 200.530.

6. The Commission, in this case, should exercise its discretion against changing the location of the hearings to Springfield.

7. Finally, it should be noted that Movants do not contend Chicago is an improper location for the hearings in this matter, *i.e.*, that the Commission lacks jurisdiction to hear this matter in Chicago. Instead, Movants simply aver that a Springfield location would be more convenient *to the Movants* than the Chicago location. The Commission should consider the convenience of all of the parties, as it has done, rather than not limiting its consideration to the Movants alone.

B. The Service Areas Are Spread Rather Evenly Throughout the State

8. The Movants contend the locality of the service areas at issue in this proceeding are closer to Springfield than to Chicago. Contrary to Movants’ characterization, the relevant service areas are not centrally located near and around Springfield. Instead, as can be seen by reviewing Movant’s Attachment A to their Motion (containing a map that identifies the localities of the service area wherein U.S. Cellular is seeking ETC designation in this proceeding), the service areas that will be addressed in this docket are spread fairly evenly throughout the State.

Many of relevant service are located in the northern portion of the state, and, are arguably closer in distance to Chicago than Springfield. Therefore, contrary to the assertions of the Movants, Springfield should not be chosen as the default hearing location simply because it is located in the central portion of Illinois and thus convenient for the Movants.

C. The Movants “Location of the Intervenors’ Witnesses” Argument is Not Persuasive

9. Finally, the Movants contend that the “location of Intervenors’ witnesses and the Staff assigned to this case are located closer to Springfield than Chicago” and that “numerous Intervenors will present testimony in opposition to the Petition.” See ¶¶ 5 and 9. These arguments are red herrings designed to obfuscate the facts and mislead the Commission.

10. The Movants are not the only parties to this proceeding and, as such, cannot speak for the other participants. Arguably, the other participants in this proceeding may proffer testimony by witnesses who do not reside in areas close to Springfield. U.S. Cellular does not believe it would be proper for the Commission to consider the convenience of the Movant’s witnesses at the expense of all other witnesses. Furthermore, at such an early stage of the proceeding, it is questionable whether any party has taken a position on the merits of the petition or begun to secure witnesses.

11. If the Movants are truly concerned about any “cost” or “burden” imposed on their witnesses in the event they are required to travel to Chicago, procedural remedies are currently in place to address these concerns. Pursuant to Section 200.660 of the Commission’s Rules of Practice, parties are permitted to submit “pre-filed” testimony and exhibits. The use of this procedural tool would negate the need to have the Movants’ witnesses proffer live testimony. Furthermore, the Administrative Law Judge, pursuant to the powers delineated in Section

200.500 of the Commission's Rules of Practice, could permit Movants' witnesses to submit to cross-examination telephonically rather than physically travel to Chicago. Again, this practice has been used numerous times in Commission proceedings.

12. Finally, with respect to Movants' arguments regarding the location of the Commission Staff, most of the Commission's technical Staff resides in Springfield arguably because the Commission's main offices are located there. While U.S. Cellular cannot and will not attempt to speak for the Staff, suffice it to say, U.S. Cellular is not aware of any instances where the Commission's technical Staff has been irreparably disadvantaged because a proceeding was based in Chicago rather than in Springfield. To the extent such has occurred, the Administrative Law Judge and the parties have always attempted to accommodate the Staff. U.S. Cellular is willing to similarly accommodate the Movants' witnesses and the Staff should such a need arise during this proceeding.

III. CONCLUSION

WHEREFORE, for each and all of the foregoing reasons, U.S. Cellular respectfully requests that the Commission deny the Motion For Change of Location of Hearings filed by the Movants in this proceeding on December 1, 2004.

Respectfully Submitted,

USCOC OF ILLINOIS RSA # 1, LLC
USCOC OF ILLINOIS RSA # 4, LLC
USCOC OF ROCKFORD, LLC
USCOC OF CENTRAL ILLINOIS, LLC

By: _____
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December 16, 2004

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STATE OF ILLINOIS
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In the Matter of the Petition of)	
)	Docket 04-0563
USCOC of Illinois #1, LLC)	
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USCOC of Rockford, LLC)	
USCOC of Central Illinois, LLC)	
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For Designation as an Eligible)	
Telecommunications Carrier)	
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NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on this date we have filed with the Clerk of the Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois 62701, the Response of USCOC of Illinois RSA #1, LLC; USCOC of Illinois RSA #4, LLC; USCOC of Rockford, LLC; and USCOC of Central Illinois, LLC (collectively "U.S. Cellular") to Motion For Change of Location of Hearings in the above captioned matter.

USCOC OF ILLINOIS RSA # 1, LLC
USCOC OF ILLINOIS RSA # 4, LLC
USCOC OF ROCKFORD, LLC
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By: _____
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CERTIFICATE OF SERVICE

I, G. Darryl Reed, an attorney, certify that I caused copies of the Response of USCOC of Illinois RSA #1, LLC; USCOC of Illinois RSA #4, LLC; USCOC of Rockford, LLC; and USCOC of Central Illinois, LLC (collectively “U.S. Cellular”) to Motion For Change of Location of Hearings to be served on each of the parties listed on the service list by U.S. Mail and e-mail this 16th day of December, 2004.

One of Its Attorneys for
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